APPELLANT'S REPLY TO SUPPLEMENTAL MEMORANDUM, FILED SUPTEMBER 29, 1972, U.S.C.A. (SA 4)

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

Department of Justice
Washington 20530

NOV 1 9 1971

Honorable John Slack
House of Representatives
Washington, D. C. 20505

Dear Congressman Slack:

Thank you for your letter of October 7, 1971 regarding the request that the Attorney General initiate proceedings pursuant to section 307(a) of the Rail Passenger Service Act of 1970, to compel the restoration of certain rail service discontinued by the Baltimore & Ohio Railroad.

As you know, we obtained the views and recommendation of the Department of Transportation, as that agency possesses expertise in the area of rail service and the position of passenger service by rail in the nationwide transportation network. The Department of Transportation has recommended that the Attorney General neither institute nor intervene in any litigation to compel the restoration of the service in question. After study of the Department of Transportation views, we concur in the determination of the Department of Transportation.

The B & O has discontinued the trains in question, claiming that they were intercity trains which might be lawfully discontinued under the Act.

The Act, in section 401(a)(1), allows member railroads to discontinue all intercity rail passenger service. "Intercity rail passenger service" is defined in section 102(5)(a) to specifically exclude "commuter and other short-haul service in metropolitan and suburban areas * * *."

As the Department of Transportation has pointed out to us, if the discontinued trains are in fact intercity trains, as the B & O contends, they of course may be discontinued. If they are commuter trains, the protection

and preservation of commuter trains is outside the statutory purpose of the Act. Congress, in section 101 of the Act, has clearly set forth the statutory purpose of the Act as "providing modern, efficient, intercity rail passenger service." All of the activities authorized by the Act and all the duties and responsibilities created by the Act relate to the retention of a network of intercity railroad passenger service only. Furthermore, the statutory mandate of section 307(a) does not give the Attorney General the authority to sue for a construction of the Act or to enjoin a purely technical violation.*/ Rather, the authority to sue is granted to protect and enhance the legislative purpose. Suit may be brought whenever AMTRAK or any other railroad:

> " * * * engages in or adheres to any action, practice or policy inconsistent with the policies and purposes of this act, refuses, fails, or neglects to discharge its duties and responsibilities under this act, or threatens any such violation, obstruction, interference, refusal, failure, or neglect * * * " [emphasis added]

The word "such" obviously refers to the same clause which empowers the Attorney General to protect the statutory purpose, as made explicit by section 101 of the Act.

Assuming arguendo that the trains are in fact commuter trains or are so held to be in the proposed litigation, the B & O might still seek to discontinue the service by filing discontinuance notices with the Interstate Commerce Commission pursuant to section 13(a)(1) of the Interstate Commerce Act. Therefore, it may be maintained that the proper forum

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*/ Any suit to halt discontinuance would, at most, turn into a technical struggle over the inclusiveness of the statutory term "commuter train". Such a determination would serve no useful purpose and would not serve to enhance and protect the statutory scheme of the Act, which is the only mandate the Attorney General has thereunder.

in which to contest the discontinuance of a commuter train is the Interstate Commerce Commission. If the Commission then denies relief, the protestants may then have access to the courts with standing in their own right. However, the case is not a proper one for intervention by the Justice Department.

Please let me know if I may be of any further assistance.

Sincerely yours,

L. Patrick Gray III

L. PATRICK GRAY, III
Assistant Attorney General